

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.1231 (M/B) of 2004

M/s Windlas Biotech Ltd. (through its Sr. Manager
(Com. & Adm.) Sh. Pawan Kumar Sharma)
40/1 Mohabewala Industrial Area, Dehradun

.... Petitioner

Vs

1. The Dy. Commissioner Customs & Central Excise,
Nehru Colony, Dehradun
2. The Regional Manager Uttar Pradesh Financial
Corporation (UFFC) Rajpur Road, Dehradun

.....Respondents

Sri P.R. Mullick, Advocate, Id. Counsel for the petitioner
Sri Arvind Vashisth, Asstt. Solicitor General, Govt. of India, Id. Counsel for respondents

Dated: - September 4, 2006

Coram: **Hon'ble P.C. Verma, J.**
 Hon'ble M.M. Ghildiyal, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned recovery notice dated 8.12.2004 (Annexure-1) issued by Deputy Commissioner, Central Excise, Dehradun-Respondent No.1.

2. By means of the aforesaid notice, the Respondent No.1 demanded the excise dues from the petitioner as the petitioner purchased the property bearing Khasra No.40/1 Khata No.32 of Village Chandra Bani, Mohabewala Industrial Area, Dehradun on which the erstwhile M/s Mesco Pharmaceuticals Ltd., Mohabewala Industrial Area was situated and the Central Excise dues were pending against erstwhile M/s Mesco Pharmaceuticals Ltd. The main owner and borrower of the money from UPFC i.e. M/s Dhana Pharmaceuticals

Ltd. had leased out the land and assets to M/s Mesco Pharmaceuticals Ltd. when the property was taken over by the UPFC under Section 29 of the U.P. Financial Corporation Act. The possession of the property was taken over by the UPFC and the entire factory and movable and immovable properties of the entire plot were taken by the U.P.F.C. under Section 29 of the aforesaid Act and the same was sold to the petitioner.

3. As per paragraph no.6 of the sale deed dated 27.11.2000 which is on record, all the liabilities in respect of taxes is payable by the vendee, therefore, it is open for the vendee-petitioner to reply the notice and thereafter the respondent No.1 may proceed in accordance with law. Therefore, we do not find any jurisdictional error in issuing the notice by Respondent No.1. It is settled law that the notice may be challenged only when it is shown to be without jurisdiction.

4. Therefore, we relegate the petitioner to reply the notice issued by Respondent No.1 and contest the case over there. However, it is made clear that the petitioner shall be given full opportunity of hearing.

5. The writ petition is dismissed accordingly. No order as to costs.

(M.M. Ghildiyal, J.)

(P.C. Verma, J.)

Rajeev Dang